

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 445

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO TELECOMMUNICATIONS; PROVIDING THAT CERTAIN RETAIL
TELECOMMUNICATIONS RATES MAY BE REMOVED FROM THE PUBLIC
REGULATION COMMISSION JURISDICTION DUE TO EFFECTIVE
COMPETITION; CONTINUING REGULATION OF SINGLE LINE FLAT-RATED
LOCAL EXCHANGE SERVICES UNTIL 2012; RESTORING THE JURISDICTION
OF THE PUBLIC REGULATION COMMISSION FOR CERTAIN RETAIL RATES IN
2013.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 63-9A-8 NMSA 1978 (being Laws 1985,
Chapter 242, Section 8, as amended) is amended to read:

"63-9A-8. REGULATION OF RATES AND CHARGES.--

A. In accordance with the policy established in the
New Mexico Telecommunications Act, the commission shall, by its
own motion or upon petition by any interested party, hold

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underscored material = new
[bracketed material] = delete

1 hearings to determine if any public telecommunications service
2 is subject to effective competition in the relevant market
3 area. When the commission has made a determination that a
4 service or part of a service is subject to effective
5 competition, the commission shall, consistent with the purposes
6 of the New Mexico Telecommunications Act, modify, reduce or
7 eliminate rules, regulations and other requirements applicable
8 to the provision of such service, including the fixing and
9 determining of specific rates, tariffs or fares for the
10 service. The commission's action may include the detariffing
11 of service or the establishment of minimum rates [~~which will~~]
12 that cover the costs for the service. Such modification shall
13 be consistent with the maintenance of the availability of
14 access to local exchange service at affordable rates and
15 comparable message [~~telecommunication~~] telecommunications
16 service rates, as established by the commission, for comparable
17 markets or market areas, except that volume discounts or other
18 discounts based on reasonable business purposes shall be
19 permitted. Upon petition or request of an affected
20 telecommunications company, the commission, upon a finding that
21 the requirements of [~~Subsection~~] Subsections B and C of this
22 section are met, shall modify the same or similar regulatory
23 requirements for those providers of comparable public
24 telecommunications services in the same relevant markets so
25 that there shall be parity of regulatory standards and

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1 requirements for all such providers.

2 B. In determining whether a service is subject to
3 effective competition, the commission shall consider ~~[the~~
4 ~~following:~~

5 ~~(1) the extent to which services are~~
6 ~~reasonably available from alternate providers in the relevant~~
7 ~~market area;~~

8 ~~(2) the ability of alternate providers to make~~
9 ~~functionally equivalent or substitute services readily~~
10 ~~available at competitive rates, terms and conditions; and~~

11 ~~(3) existing economic or regulatory barriers]~~
12 ~~whether:~~

13 (1) a comparable service or facility is
14 available from a supplier other than an incumbent
15 telecommunications company in the relevant market area being
16 considered by the commission; and

17 (2) market forces in that market are
18 sufficient to assure just and reasonable rates without
19 regulation.

20 C. When considering market forces in the market
21 proposed to be deregulated, the commission shall consider
22 factors, including the presence or absence of all of the
23 following:

24 (1) wireless communications services;

25 (2) cable telephony services; and

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1 (3) voice over internet protocol services.

2 ~~[G.]~~ D. No provider of public telecommunications
3 service may use current revenues earned or expenses incurred in
4 conjunction with any noncompetitive service to subsidize
5 competitive public telecommunications services. In order to
6 avoid cross-subsidization of competitive services by
7 noncompetitive telecommunications services, prices or rates
8 charged for a competitive telecommunications service shall
9 cover the cost for the provision of the service. In any
10 proceeding held pursuant to this section, the party providing
11 the service shall bear the burden of proving that the prices
12 charged for competitive telecommunications services cover cost.

13 ~~[D.]~~ E. The commission may, upon its own motion or
14 on the petition of an interested party and after notice to all
15 interested parties and customers and a hearing, reclassify any
16 service previously determined to be a competitive
17 telecommunications service if after a hearing the commission
18 finds that a service is not subject to effective competition.

19 F. Effective July 1, 2009, upon the election by a
20 telecommunications company subject to rate regulation,
21 including a mid-size carrier, the jurisdiction of the
22 commission shall not include the regulation of retail rates for
23 business and residential local exchange services, interexchange
24 services, private line services, designed services or
25 discretionary services provided throughout the state, except

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1 for single line flat-rated residential and business local
2 exchange services. The commission shall retain all other forms
3 of regulatory jurisdiction within the current authority of the
4 commission.

5 G. An election pursuant to this subsection shall be
6 filed with the commission and shall contain:

7 (1) the name and address of the
8 telecommunications company;

9 (2) a narrative describing:

10 (a) the telecommunications services
11 provided by the telecommunications company;

12 (b) the geographic area and market
13 served by the telecommunications company; and

14 (c) the telecommunications services for
15 which the election is made; and

16 (3) the effective date of the election, which
17 shall be no earlier than the later of July 1, 2009 or thirty
18 days after the date the notice is filed with the commission.

19 H. For a telecommunications company that files an
20 election pursuant to this section, the commission shall retain
21 jurisdiction to set reasonable price caps for single line
22 flat-rated residential and business local exchange services.

23 I. For a company filing an election pursuant to
24 this section that offers single line flat-rated local exchange
25 service for both residential and business customers on a stand-

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1 alone basis, the rate regulation jurisdiction of the commission
2 shall not extend to the rate regulation of packages or bundles
3 of services that include single line flat-rated local exchange
4 services.

5 J. For a telecommunications company that has made
6 an election pursuant to this section, beginning on July 1,
7 2012, the retail rate jurisdiction of the commission shall not
8 be applicable to single line flat-rated residential and
9 business basic local exchange service rates unless the
10 commission, during the first six calendar months of 2012,
11 extends its retail rate jurisdiction over single line
12 flat-rated residential and business basic local exchange
13 service rates provided by a previously rate-regulated
14 telecommunications company. The commission shall retain all
15 other forms of regulatory jurisdiction within the current
16 authority of the commission. The commission may extend its
17 retail rate regulation jurisdiction pursuant to this subsection
18 for not more than two years and may do so only upon a finding
19 supported by substantial evidence that such action is necessary
20 to protect the public interest.

21 K. A telecommunications company that is regulated
22 pursuant to an alternative form of regulation plan on July 1,
23 2009 shall no longer be subject to the rate regulation terms of
24 that plan upon making an election to be governed by this
25 section, but shall remain subject to all other requirements of

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1 an alternative form of regulation plan, including any service
2 quality or investment obligations associated with that plan.
3 No election filed pursuant to this section shall affect any
4 obligations related to settlement agreements approved by the
5 commission to address noncompliance with a previous alternative
6 form of regulation plan.

7 L. A telecommunications company that filed an
8 election pursuant to this section shall remain obligated to
9 meet applicable service quality rules of the commission then in
10 effect or adopted by the commission in accordance with this
11 section, but such rules shall not provide for the payment of
12 customer credits associated with failure to meet any service
13 quality rule.

14 M. A telecommunications company that has made an
15 election pursuant to this section shall charge the same rates
16 for single line flat-rated residential or business basic local
17 exchange service in each local exchange calling area served by
18 the telecommunications company within the state, whether urban
19 or rural.

20 N. A telecommunications company that has made an
21 election pursuant to this section shall make available to the
22 public on the telecommunications company's web site the prices,
23 rates, terms and conditions of services that are no longer
24 subject to a tariff imposed by the commission pursuant to the
25 New Mexico Telecommunications Act.

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1 O. The commission shall require a
2 telecommunications company that fails to meet a service quality
3 metric imposed by the commission consistent with this section
4 to submit a plan to remedy any service quality failures
5 promptly and may also assess an administrative fine pursuant to
6 Section 63-7-23 NMSA 1978.

7 P. As used in this section:

8 (1) "designed services" means the provisioning
9 of regulated circuits requiring treatment, equipment or
10 engineering design purchased from an ILEC's tariff or on an
11 individual contract basis, including analog private line
12 services; DDS; DS-1, including channelized service; DS-3; ISDN-
13 PRI; ISDN-BRI; and special assemblies where all facilities and
14 equipment provided are physically located in the state of New
15 Mexico; and

16 (2) "discretionary services" means voice mail,
17 caller ID, caller name ID, call waiting, three-way calling,
18 call forwarding, call return, call blocker and auto redial and
19 any similar service sold as an add-on to a customer's basic
20 local exchange service."

21 Section 2. Section 63-9A-8 NMSA 1978 (being Laws 1985,
22 Chapter 242, Section 8, as amended, and as further amended by
23 Section 1 of this act) is repealed and a new Section 63-9A-8
24 NMSA 1978 is enacted to read:

25 "63-9A-8. [NEW MATERIAL] REGULATION OF RATES AND

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1 CHARGES.--

2 A. In accordance with the policy established in the
3 New Mexico Telecommunications Act, the commission shall, by its
4 own motion or upon petition by any interested party, hold
5 hearings to determine if any public telecommunications service
6 is subject to effective competition in the relevant market
7 area. When the commission has made a determination that a
8 service or part of a service is subject to effective
9 competition, the commission shall, consistent with the purposes
10 of the New Mexico Telecommunications Act, modify, reduce or
11 eliminate rules, regulations and other requirements applicable
12 to the provision of such service, including the fixing and
13 determining of specific rates, tariffs or fares for the
14 service. The commission's action may include the detariffing
15 of service or the establishment of minimum rates that cover the
16 costs for the service. Such modification shall be consistent
17 with the maintenance of the availability of access to local
18 exchange service at affordable rates and comparable message
19 telecommunications service rates, as established by the
20 commission, for comparable markets or market areas, except that
21 volume discounts or other discounts based on reasonable
22 business purposes shall be permitted. Upon petition or request
23 of an affected telecommunications company, the commission, upon
24 a finding that the requirements of Subsections B and C of this
25 section are met, shall modify the same or similar regulatory

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1 requirements for those providers of comparable public
2 telecommunications services in the same relevant markets so
3 that there shall be parity of regulatory standards and
4 requirements for all such providers.

5 B. In determining whether a service is subject to
6 effective competition, the commission shall consider whether:

7 (1) a comparable service or facility is
8 available from a supplier other than an incumbent
9 telecommunications company in the relevant market area being
10 considered by the commission; and

11 (2) market forces in that market are
12 sufficient to assure just and reasonable rates without
13 regulation.

14 C. When considering market forces in the market
15 proposed to be deregulated, the commission shall consider
16 factors, including the presence or absence of all of the
17 following:

- 18 (1) wireless communications services;
19 (2) cable telephony services; and
20 (3) voice over internet protocol services.

21 D. No provider of public telecommunications service
22 may use current revenues earned or expenses incurred in
23 conjunction with any noncompetitive service to subsidize
24 competitive public telecommunications services. In order to
25 avoid cross-subsidization of competitive services by

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1 noncompetitive telecommunications services, prices or rates
2 charged for a competitive telecommunications service shall
3 cover the cost for the provision of the service. In any
4 proceeding held pursuant to this section, the party providing
5 the service shall bear the burden of proving that the prices
6 charged for competitive telecommunications services cover cost.

7 E. The commission may, upon its own motion or on
8 the petition of an interested party and after notice to all
9 interested parties and customers and a hearing, reclassify any
10 service previously determined to be a competitive
11 telecommunications service if after a hearing the commission
12 finds that a service is not subject to effective competition."

13 Section 3. EFFECTIVE DATE.--

14 A. The effective date of the provisions of Section
15 1 of this act is July 1, 2009.

16 B. The effective date of the provisions of Section
17 2 of this act is July 1, 2013.